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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,611	01/24/2001	Barry Fruchtman	SJ0920000171US1	5230
46917	7590	04/15/2005	EXAMINER	
KONRAD RAYNES & VICTOR, LLP. ATTN: IBM37 315 SOUTH BEVERLY DRIVE, SUITE 210 BEVERLY HILLS, CA 90212				OSMAN, RAMY M
ART UNIT		PAPER NUMBER		
2157				

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	09/769,611	FRUCHTMAN ET AL.	
	Examiner	Art Unit	
	Ramy M Osman	2157	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**THE REPLY FILED 28 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
(b)  They raise the issue of new matter (see NOTE below);  
(c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 1-39.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.

13.  Other: (See attached DETAILED ACTION).

## **DETAILED ACTION**

### ***Status of Claims***

1. This communication is responsive to the Amendment After-Final filed on March 28, 2005. Claims 1-39 are pending.
  
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. **Claim 1-11,14-24 and 27-37 remain rejected under 35 U.S.C. 102(e) as being anticipated by Davies et al (US Patent No 6,839,767),** since the arguments addressed in the response filed 3/28/2005 are not persuasive, as explained below.
  
4. Please refer to previous final action dated 1/27/2005 for detailed rejection under 102(e).

### ***Claim Rejections - 35 USC § 103***

5. **Claims 12,13,25,26,38 and 39 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Davies et al (US Patent No 6,839,767)in view of Forecast et al (US Patent No 6,230,200).**
  
6. Please refer to previous final action dated 1/27/2005 for detailed rejection under 103(a).

***Response to Amendment***

7. Examiner acknowledges the amendment to claim 13, filed 3/28/2005. No claims were amended, added or cancelled.

***Response to Arguments***

8. Applicant argues that Davies does not disclose ‘determining one client transmitting data at a transmission rate less than a threshold transmission rate less than a threshold’.

However, Davies teaches data flows (i.e. sessions) [see figure 1 #10] passing over a path [see figure 1 #10b]. The path bandwidth characteristics stay between a Minimum Guaranteed Bandwidth and a maximum bandwidth (column 7 lines 39-52 and column 8 lines 27-30). Davies further discloses determining a session to be inactive in its data traffic (column 9 lines 45-51). An inactive session means that the transmission rate is zero, and it would therefore be less than any type of threshold rate. Furthermore, the claim fails to mention the setting or determining of a threshold rate, and it is therefore broadly interpreted as mentioned above.

9. Applicant argues that Davies fails to disclose denying subsequent transactions from the determined client access to the shared resource to provide additional space in the log file for new transactions from additional clients requesting access to the resource.

However, Davies teaches terminating sessions that are inactive in their data flows, and that when a session (i.e. data flow) is terminated, all corresponding communications are subsequently denied from that session (column 9 lines 45-51 and column 10 lines 20-26). Furthermore, concerning the limitation ‘to provide additional space in the log file’, applicant failed to limit the scope of the ‘log file’ as regards to its properties. It is therefore broadly

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interpreted to mean a table, record, or any other object type that can contain a list of elements.

Davies teaches a table that records granted sessions, and if a session is denied then that record is removed, which inherently leaves space for additional entries (column 9 lines 45-51).

10. Applicant argues that Davies does not disclose that connections that have been active for more than a threshold period of time are checked.

However, Davies does disclose terminating sessions after relatively long periods of inactivity in their data traffic (column 7 lines 20-40, column 9 lines 45-51 and column 10 lines 7-25). Davies teaches that when a session is determined (i.e. checked) to be inactive for a relatively long period of time, its session is terminated.

11. Applicant argues that Davies does not disclose removing pending transactions whose access to the resource has completed.

However, Davies does teach that it is inherent that any pending transaction of a terminated session also terminated because the session is longer active (column 7 lines 20-40 and column 9 lines 45-51).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO  
April 14, 2005



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